

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SUSAN L. TORRES : CIVIL ACTION
 :
 v. :
 :
 EAFCO, INC. : NO. 00-2846

MEMORANDUM

Dalzell, J.

January 17, 2001

Plaintiff Susan L. Torres has sued her former employer, EAFCO, Inc. (hereinafter "EAFCO") for sex discrimination under 42 U.S.C. § 2000e ("Title VII") and the Pennsylvania Human Relations Act, 43 P.S. § 955 ("PHRA"). Torres's claims stem from her denial of promotion, job assignment transfer, and ultimate termination from defendant EAFCO.

After the close of discovery, defendant has moved for summary judgment, Torres has responded, and defendant has filed a sur-reply. For the reasons set forth below, we will deny the motion.

I. Facts

Torres began working for EAFCO,¹ a Pennsylvania corporation that manufactures and assembles cast-iron boilers, on October 4, 1994 as a forklift driver. One month later, she became a member of the Glass, Molders, Pottery, Plastics, and Allied Workers Union Local No. 238-B (hereinafter "the Union").²

¹ Eastern Foundry Company.

² Union employees are subject to the provisions of a collective bargaining agreement ("CBA") with EAFCO. The most
(continued...)

On November 1, 1998, EAFCO split into two companies, Boyertown Foundry ("the Foundry") and EAFCO. Following the split, Terry Detwiler became EAFCO's plant manager. Brett Downer had been and continued as EAFCO's Assembly Department Foreperson.

About April, 1997, EAFCO posted a vacancy for the position of boiler assembler on Line 3, first shift, which Torres bid for and won.³ Torres started on Line 3, first shift as a "Class C" boiler assembler.⁴ EAFCO promoted Torres to Class B boiler assembler after approximately six months. After another six months, Torres, the only female boiler assembler, asked Downer to promote her to Class A.⁵ Downer, who had "unfettered discretion" to promote union employees within the assembly department, refused her request, Def.'s Mot. at p. 3.⁶

As of December, 1998, Torres was working the first shift on the Line 3 assembly. In December, 1998, Michael

²(...continued)
recent CBA was in effect from January 1, 1998 until January 1, 2001.

³ EAFCO runs three assembly lines. During the busy season, EAFCO typically runs two shifts on Line 3, and during the slow season typically runs only the first shift.

⁴ There are three levels of boiler assemblers, classes C, B, and A. C is the entry-level position.

⁵ Each class promotion carries a higher pay rate under the CBA.

⁶ According to Torres, Downer told her that she wasn't qualified to become Class A because she could not assemble a "61" boiler, Torres Aff. at 43. Later, however, Downer promoted Michael Zangrelli to Class A before he was able to assemble a 61, Heinbach Aff. at ¶ 66.

Zangrelli began working on Line 3, first shift, along with the team leader, Craig Heinbach, Kevin Lewis, and Torres. Before joining Line 3, first shift at EAFCO, Zangrelli had worked at the Foundry. In early February, 1999, EAFCO entered into its "slowdown" period and removed Torres from Line 3, first shift, Torres Aff. at ¶¶ 61-63.⁷ During the slowdown, Torres performed other jobs around EAFCO, id. at ¶¶ 65-66.

According to Torres, EAFCO returned to full production on April 13, 1999, at which time she resumed her position on Line 3, first shift, along with Heinbach, Lewis, and Zangrelli, Torres Aff. at ¶¶ 71, 72. Torres states that on April 15, 1999, Downer informed her that EAFCO did not have enough work for the three men, two of whom junior to Torres, who worked Line 3, second shift and that he was removing her from first shift, Torres Aff. at ¶¶ 73-75. Later that day, Torres filed a grievance with the Union shop steward, Harold "Woody" Roberts. Although she alleged sex discrimination, Roberts filed a grievance without reference to sex discrimination, Def.'s Mot. at p.5.

According to Torres, her co-workers began harassing and/or escalated their harassment of her in retaliation for filing her grievance. Although she reported this information to Downer, EAFCO did nothing to stop this harassment, Torres Aff. at ¶¶ 78-80.

⁷ EAFCO asserts that Torres was not removed because of the slowdown, but rather had been "bumped" by Zangrelli in accordance with Union policy and his seniority, Detwiler Dep. at pp. 29-30, 34.

Around June 9, 1999, after an incident between Downer and Torres, EAFCO fired Torres for committing an "intolerable" offense under EAFCO's company guidelines. Specifically, the stated reason for the termination was that Torres told Downer, "I'm going to go get a gun and shoot you and that fucking Detwiler", Downer Dep. at p. 79. Torres denied ever making that threat.⁸ Torres asked Roberts to file a grievance on her behalf, which he did, but EAFCO refused to re-hire her. The Union did not take Torres's case to arbitration.

On June 23, 1999, Torres filed claims of sex discrimination and retaliation with the Pennsylvania Human Relations Commission ("PHRC") and cross-filed her complaint with the Equal Employment Opportunity Commission ("EEOC"). On May 15, 2000, the EEOC issued Torres her "right to sue" letter, and Torres timely filed her complaint here. The PHRC has since closed Torres's complaint administratively.⁹

II. Legal Analysis

Although Torres brings claims under both Title VII and the PHRA, "[t]he analysis required for adjudicating [plaintiff's] claim under PHRA is identical to a Title VII inquiry", Goosby v. Johnson & Johnson Medical, Inc., 228 F.3d 313, 317 n.3 (3d Cir.

⁸ Torres claims that she told Downer that he and Detwiler both "suck" and were not capable of performing the jobs that she handles, Torres Aff. at ¶ 95.

⁹ As we address below, Torres also sought unemployment compensation that the Unemployment Compensation Appeal Board denied.

2000)(citing Jones v. School Dist. of Philadelphia, 198 F.3d 403, 410-11 (3d Cir. 1999)). Therefore, we need not separately address her claim under the PHRA in considering this summary judgment motion.¹⁰

A. Collateral Effect of the Unemployment Compensation Appeal Board's Decision

As a preliminary matter, defendant argues that Torres's claims arising out of her termination are barred by the doctrines of res judicata and collateral estoppel because the Unemployment Compensation Appeal Board ("Unemployment Board") found that her termination stemmed from her own willful misconduct and, on appeal, the Commonwealth Court of Pennsylvania affirmed.

¹⁰ A summary judgment motion should only be granted if we conclude that "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law," Fed. R. Civ. P. 56(c). In a motion for summary judgment, the moving party bears the burden of proving that no genuine issue of material fact is in dispute, see Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp., 475 U.S. 574, 585 n.10 (1986), and all evidence must be viewed in the light most favorable to the nonmoving party, see id. at 587. The mere existence of some evidence in support of the nonmoving party will not be sufficient for denial of a motion for summary judgment; there must be enough evidence to enable a jury reasonably to find for the nonmoving party on that issue, Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986).

Once the moving party has carried its initial burden, then the nonmoving party "must come forward with 'specific facts showing there is a genuine issue for trial'", Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)) (emphasis omitted); see also Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986) (holding that the nonmoving party must go beyond the pleadings to show that there is a genuine issue for trial).

Following her termination, Torres filed a claim for unemployment benefits, which EAFCO contested. Both parties participated in a hearing on or about July 27, 1999 concerning whether Torres's actions leading to her dismissal constituted "willful misconduct" and rendered her ineligible for benefits. At the hearing both Downer and Detwiler testified on behalf of EAFCO, while Torres testified on her own behalf.

According to the transcript of the hearing (attached as an exhibit to Torres's deposition in this matter), both sides told conflicting stories of the June 9, 1999 incident between Downer and Torres, see Def.'s Ex. D-6.

According to Torres, as she was performing physically demanding work, Downer approached her from behind and mockingly asked her "how's it going", as he had done several times in the past, id. at 29a-30a. Downer also made some comment about Torres missing the money she used make on Line 3, first shift, id.¹¹ Although she ignored him at first, Downer then said, in a mocking tone, "you love it here", id. At that point, Torres got angry and yelled words to the effect of "you and Terry [Detwiler] suck and can't do it [the job she was performing]", id. Nothing further happened at that time, but later in the day Downer approached her with a piece of paper and told her that she was fired, id. at 31a. When she asked why she was being fired,

¹¹ This event was several months after Torres had been removed from her position on Line 3, first shift.

Downer told her it was because she had threatened him, to which she responded with disbelief, id.

According to Downer's version of events: "I was walking by the area in which she was working in and at that time she started going on her typical carrying on and complaining about the job and how I was screwing her by putting her on that job, which in my opinion she was the least senior person to go to that job whatever the job may have been....And after she was going on and on complaining, the last words I heard out of her mouth was 'I'm going to go get a gun and shoot you and that fucking Detwiler', in them words", id. at 22a.

On August 2, 1999, the Unemployment Board's Referee ruled against Torres and denied her claim for benefits. The Referee's one and a half page written order contained six findings of fact and one paragraph of "reasoning", id. at 40a. The Referee noted the conflicting testimony and credited EAFCO's witnesses and, therefore, resolved all relevant conflicts in favor of the employer, id. Torres filed an appeal with the Board of Review, which summarily affirmed the Referee's decision on August 31, 1999, id. at 38a. Torres filed a timely appeal with the Commonwealth Court, which affirmed in a five-page unreported opinion on March 24, 2000, id. at Def. Ex. D-7.¹²

¹² The Commonwealth Court's scope of review was "limited to determining whether constitutional rights were violated, whether errors of law were committed, or whether necessary findings of fact are unsupported by substantial evidence", id. at p. 3.

Defendant argues that the Commonwealth Court's decision has a "preclusive effect over the Plaintiff's claims stemming from her allegations that her termination from employment at EAFCO was because of her sex and in retaliation for either asking for a promotion or filing a discrimination grievance with the Union", Def.'s Brief at p. 11.¹³

"Federal courts must give a state court judgment the same preclusive effect as would the courts of that state", Swineford v. Snyder County, 15 F.3d 1258, 1266 (3d Cir. 1994); 28 U.S.C. § 1738. Under Pennsylvania law, preclusion applies where four prongs are satisfied: (1) an issue decided in a prior action is identical to one presented in a later action; (2) the prior action resulted in a final judgment on the merits; (3) the party against whom collateral estoppel is asserted was a party to the prior action, or is in privity with a party to the prior action; and (4) the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior action. See Rue v. K-Mart Corp., 713 A.2d 82, 84 (Pa. 1998).

¹³ In support, defendant cites Kremer v. Chemical Construction Corp., 456 U.S. 461 (1982) for the proposition that "[i]n a Title VII action, a prior state administrative decision enjoys preclusive effect if it is affirmed by a state court with jurisdiction and if the state court's decision would have preclusive effect under the law of the state", Def.'s Brief at p. 12. On its face, however, Kremer involved an administrative decision regarding the plaintiff's claim of employment discrimination, see Kremer, 456 U.S. 461 (1982), and does not address the situation now before us, where the only decision reviewed is a denial of unemployment benefits.

Although our Court of Appeals has addressed the preclusive effect of Unemployment Compensation Review Board decisions in subsequent 42 U.S.C. § 1983 claims, it has not addressed those defenses with respect to Title VII discrimination actions and has, moreover, noted the absence of Pennsylvania law on the subject, see Kelley v. TYK Refractories Co., 860 F.2d 1188, 1194 (3d Cir. 1988)(holding that Pennsylvania Supreme Court would not preclude a plaintiff from pursuing a § 1981 race discrimination claim after losing before the Unemployment Compensation Review Board and after decision was reviewed and affirmed by the Commonwealth Court); Swineford v. Snyder County Pa., 15 F.3d 1258, 1269 (3d Cir. 1994)(noting that Pennsylvania law was not settled as to the preclusive effect of unemployment compensation hearings and refusing to give offensive preclusive effect to the unreviewed Unemployment Compensation Review Board findings in a subsequent 42 U.S.C. § 1983 action); cf. Edmundson v. Borough of Kennett Square, 4 F.3d 186, 191 (3d Cir. 1993)(applying claim preclusion to the reviewed decision of Unemployment Compensation Review Board in subsequent § 1983 action).

Since these equivocal decisions, the Pennsylvania Supreme Court has at last spoken on the subject, see Rue v. K-Mart Corp., 713 A.2d 82, 86 (Pa. 1998)(holding that the "substantial procedural and economic disparities between unemployment compensation proceedings and later civil proceedings

negate the preclusive effect of a Referee's factual findings").¹⁴ The Pennsylvania Supreme Court explicitly limited its holding to "the application of collateral estoppel in the unemployment compensation context", id. at 87. Therefore, because the courts of Pennsylvania no longer apply the doctrines of preclusion in the unemployment compensation context, we will not do so here.¹⁵

We now proceed to the substance of Torres's Title VII claims for discrimination and retaliation.

B. Sex Discrimination Claim¹⁶

Title VII of the Civil Rights Act of 1964 states that

¹⁴ Rue involved a former employee who sued K-Mart for defamation after K-Mart told other employees that plaintiff was fired for stealing a bag of potato chips, id. at 84. In an earlier proceeding before the Unemployment Compensation Review Board, however, the Referee found that plaintiff had not stolen the bag of potato chips and granted her benefits, id. Based upon the doctrine of collateral estoppel, the trial court prevented K-Mart from introducing testimony to prove that plaintiff had, in fact, stolen a bag of potato chips.

¹⁵ We are puzzled that EAFCO cited Rue in setting forth the elements of collateral estoppel, but failed to mention that the very issue addressed in Rue, "whether, in a subsequent civil action, the doctrine of collateral estoppel applies to the factual findings of an Unemployment Compensation Referee", id. at 82, was applicable here, see Def.'s Brief at p. 17. Although in its arguments defendant makes much of whether a particular decision is reviewed or unreviewed, Rue clearly does not distinguish between the two situations.

¹⁶ EAFCO argues with respect to Torres's discrimination claims that: (1) plaintiff has failed to make out a prima facie case of gender discrimination on her claim that her "removal" from Line 3 was an adverse employment action, or, in the alternative she cannot demonstrate pretext; and (2) plaintiff has failed to show that Downer's refusal to train and/or promote her to Class A was because of her sex. We will take each argument in turn, and then address EAFCO's arguments regarding Torres's retaliation claims.

"[i]t shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual . . . because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1) (1994).

We analyze this case under the framework articulated for "indirect" discrimination in McDonnell-Douglas Corp. v. Green, 411 U.S. 792, 802 (1973) and Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981). Under this familiar framework, a plaintiff must first establish a prima facie case of discrimination. If the plaintiff successfully does so, the burden of production shifts to the defendant, who is required to articulate a legitimate, nondiscriminatory reason for the challenged employment action, Burdine, 450 U.S. at 253-54. If the employer is able to proffer a legitimate, nondiscriminatory reason for its actions, the plaintiff must demonstrate that the proffered reason was merely a pretext for unlawful discrimination, Goosby v. Johnson & Johnson Medical, Inc., 228 F.3d 313, 319 (3d Cir. 2000)(citing Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133 (2000)).

In order to establish a prima facie case of sex discrimination, a plaintiff must show that: (1) she is a member of a protected class; (2) she was qualified for the position; and (3) nonmembers of the protected class were treated more favorably, Goosby, 228 F.3d at 319. A primary purpose of the prima facie case is to "eliminate the most obvious, lawful

reasons for the defendant's action," Pivirotto, 191 F.3d 344, 352 (citing Burdine, 450 U.S. at 253-54), and "[t]he central focus . . . is always whether the employer is treating some people less favorably than others because of their race, color, religion, sex, or national origin", Pivirotto, 191 F.3d 344, 352 (quoting Furnco Constr. Corp. v. Waters, 438 U.S. 567, 577 (1978) (internal quotation marks omitted)).

1. Torres's Removal from Line 3, first shift

Defendant does not dispute that Torres meets the first two elements for a prima facie case.¹⁷ Defendant does, however, deny that Torres has met the third element for a prima facie case, that nonmembers of the protected class were treated more favorably. As detailed above, Torres claims that EAFCO removed her on April 15, 1999 from Line 3, first shift in order to make room for the men on the second shift, two of whom were junior to her, Torres Aff. at 73-74. Torres has met the burden of demonstrating that she, the only female boiler assembler, was treated less favorably than her male co-workers.

Defendant argues that, in fact, Zangrelli "bumped" Torres from Line 3, first shift in December, 1998 in accordance with a legitimate Union policy and that her removal is not an "adverse employment action".¹⁸ According to defendant,

¹⁷ That is, Torres is female, and she was qualified to be a Class B boiler assembler on Line 3, first shift.

¹⁸ EAFCO presents this argument as both an attack on
(continued...)

Zangrelli, exercising his right to transfer from the Foundry to EAFCO, began working on Line 3, first shift on or about December 21, 1998, and, after thirty day training period, "bumped" plaintiff from her position on Line 3, first shift on or about February 5, 1999, Dep. Detwiler at ¶. 57, 147.

By contrast, Torres and Heinbach both aver that although Zangrelli had a right to "bump" onto Line 3, first shift, Zangrelli did not, in fact, displace Torres from her position, because she was not immediately removed from her position, Torres Aff. at ¶¶ 58-60. According to Heinbach, the Line 3, first shift group leader, when an employee "bumps" another employee, the bumped employee leaves the position immediately, unless she is responsible for training the bumping employee, Heinbach Aff. at ¶ 61. Here, Heinbach, not Torres, had the responsibility to train Zangrelli and, had Torres been "bumped", EAFCO would have removed her at that time (in December, 1998), id. at ¶ 62.

Moreover, contrary to EAFCO's assertion that the training period is thirty days, Torres and Heinbach argue that the training period is only ten days, Torres Aff. at ¶ 54, Heinbach Aff. at ¶ 55. In fact, the CBA section relating to bumping rights provides, in relevant part, that "[t]he required

¹⁸(...continued)
plaintiff's prima facie case and as its stated legitimated nondiscriminatory reason. We think it is more properly considered as the latter. At best, EAFCO's argument demonstrates that there is a material factual dispute as to the prima facie case.

ability, skill, and experience to do the job must be demonstrated within the first ten working days", Def. Ex. B.

Torres argues, therefore, that EAFCO's proffered legitimate reason is simply not true. Had Zangrelli legitimately bumped Torres, she would have left Line 3, first shift within ten days of Zangrelli's arrival. According to Torres, however, she worked on Line 3, first shift along with Zangrelli for almost sixty days¹⁹ before she was taken off the line, Pl.'s Resp. at p. 12, and that when EAFCO did remove her in early February, 1999, it did so because of the slowdown. When the slowdown ended on or about April 12, 1999, Torres returned to Line 3, first shift until Downer removed her on April 15 in order to provide work for the "men" on second shift, two of whom were junior to Torres.²⁰

We find that plaintiff has, for purposes of surviving a motion for summary judgment, sufficiently demonstrated that defendant's articulated reason for its action is merely a pretext for sex discrimination.²¹ Mindful of Goosby's admonition that

¹⁹ Torres and Heinbach both recall that Zangrelli began working at Line 3, first shift just after the deer season in early to mid-December, Torres Aff. at ¶ 51, Heinbach Aff. at ¶ 52.

²⁰ Heinbach claims to have overheard Downer tell Torres that she would have to leave first shift in order to give more work to the men on second shift, Heinbach Aff. at ¶ 78.

²¹ "In appropriate circumstances, the trier of fact can reasonably infer from the falsity of the explanation that the employer is dissembling to cover up a discriminatory purpose. Such an inference is consistent with the general principle of evidence law that the factfinder is entitled to consider a party's dishonesty about a material fact as 'affirmative evidence (continued...)"

"[i]n an employment discrimination case 'a trial court must be cautious about granting summary judgment to an employer when, as here, its intent is at issue'", 228 F.3d at 321, we find that summary judgment is unwarranted.

2. EAFCO's Failure to Promote Torres to Class A²²

EAFCO next argues that plaintiff has failed to demonstrate pretext as to Downer's refusal to promote Torres to Class A boiler assembler, Def.'s Brief at p. 24. EAFCO argues that because Torres "only" worked on Line 3 from April, 1997 to February, 1999 and because Line 3 usually saw "WB"-type boilers, she did not have the requisite experience to become a Class A boiler assembler.

However, according to Heinbach, the group leader for Line 3, first shift, and a Class A boiler assembler himself, Downer deviated from the usual promotion procedure when Downer (1) refused to promote Torres and (2) sua sponte promoted Zangrelli, a male employee, to Class A before Zangrelli had had

²¹(...continued)
of guilt'", Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, -, 120 S.Ct. 2097, 2108 (2000). Reeves concluded, "[t]hus, a plaintiff's prima facie case, combined with sufficient evidence to find that the employer's asserted justification is false, may permit the trier of fact to conclude that the employer unlawfully discriminated", id. at 2109.

²² Although defendant has challenged isolated incidents, we note that "[a] play cannot be understood on the basis of some of its scenes but only on its entire performance, and similarly, a discrimination analysis must concentrate not on individual incidents, but on the overall scenario", Andrews v. City of Philadelphia, 895 F.2d 1469, 1484 (3d. Cir. 1990).

experience with many different types of boilers, including the "61", Heinbach Aff. at ¶¶ 40, 41, 63-66.²³

According to Heinbach, because Downer does not know how to assemble a boiler, Downer usually relies on the opinions of the group leader and co-workers when assessing whether someone should be promoted, *id.* at 16. Although Heinbach thought that Torres was ready for Class A, when Torres asked Downer for the promotion, Downer told her that she didn't deserve the promotion because she lacked experience on the "61", *id.* at 39. Under these circumstances, a reasonable fact-finder could conclude not only that Downer's stated reason for denying Torres a promotion was false, but that his true reason was because she is a woman.

As above, plaintiff has demonstrated that defendant's articulated reason for its failure to promote her is merely pretext, and we will deny summary judgment as to this point.

C. Retaliation Claim

To establish a prima facie claim of retaliation, a plaintiff must show that she engaged in protected activity, that the employer took an adverse employment action against her, and there is a causal connection between the protected activity and

²³ Downer testified at his deposition that Zangrelli had been promoted from Class B to Class A during the period of February, 1997 to June, 1999, Downer Dep. at p. 50. Although counsel for defendant interjected, "That's not accurate", *id.*, the lawyer's testimony is not evidence. Even if EAFCO promoted Zangrelli to Class A only after terminating Torres, it is still relevant to Torres's discrimination claim.

the adverse employment action, Goosby, 228 F.3d at 323 (citing Woodson v. Scott Paper Co., 109 F.3d 913, 920 (3d Cir. 1997)).

Torres filed her grievance on April 15, 1999. At that time, EAFCO was aware that Torres had intended the grievance to include sex discrimination, even though Woody Roberts, the Union representative, refused to write it up that way, Downer Dep. at ¶. 36-37. Although Torres had experienced mild harassment before filing her grievance, she claims that after she filed the grievance, incidents of harassment increased in frequency and severity, Torres Dep. at ¶. 81-87. Downer admits that Torres complained to him about co-workers "messing" with her forklift, Downer Dep. at ¶. 26-28. Downer cannot remember, but does not deny, that Torres told him that some of her co-workers called her a bitch, whore, or cunt, id. at 92. Downer recalls being told that Gary Herb, one of Torres's co-workers, had greased lifter knobs and the steering wheel on Torres's forklift, id. at 94.

For all of these incidents, Downer "did all [he] can do, question people", id. As Downer testified, "I can't prove no one individual did it unless someone seen them doing it", id. As he admitted throughout his deposition, Downer tended not to discipline any employee unless there was more than one witness to an incident. When told by employees that a co-worker, John Frederick, had stolen a gun from another employee, Downer testified, "I asked him. You can't prove anyone stole anything. I can't discipline him for it from somebody else's hearsay", id. at 91. According to Detwiler, "[i]t would be very difficult to

discipline somebody on hearsay, I believe. You know, one person would say he said this, the other person would say, no, he said that. And it's a back-and-forth thing. There's a lot of backbiting that goes on in that plant," Detwiler Dep. at p. 17.

According to Torres, the incidents of harassment culminated in the June 9, 1999 confrontation between her and Downer. As Downer testified at his deposition, "I approached Sue Torres and asked her how it was going, and she went off to her usual lashing out at me, bitching up a storm about how I'm screwing her in there. And right at the end of her statement, she lashed out, I'm going to go get a gun and shoot you and that fucking Detwiler", Downer Dep. at p. 79. Torres vehemently denies making any such statement, and, as there were no witnesses who overheard the exchange, Detwiler's comment that "it's a back-and-forth thing" where "one person would say he said this, the other person would say, no, he said that" is apt.²⁴

EAFCO argues that Torres has not produced sufficient evidence of a causal connection between her filing the grievance and any ensuing behavior, including the incidents of harassment and her ultimate termination. Taking the evidence in the light most favorable to Torres, she has alleged that she engaged in protected activity (i.e., filing her April 15, 1999 grievance) and that EAFCO took adverse employment actions against her during

²⁴ Although EAFCO apparently had a policy of never disciplining an employee based solely upon the word of one other person, it now asks us to take Downer's word over Torres's, an invitation that Rule 56 requires that we decline.

the ensuing seven weeks (i.e., condoning and/or doing nothing to stop harassment and ultimately terminating her). The timing and pattern of the harassment, as Torres tells it, provide the link with her filing of the grievance. There is, therefore, genuine dispute as to the material fact of causation, and we will deny summary judgment as to this issue.